

**Department of State Health Services  
Council Agenda Memo for State Health Services Council  
February 24, 2011**

**Agenda Item Title:** Amendments to rules and the repeal of rules concerning community centers

**Agenda Number:** 4.a.ii

**Recommended Council Action:**

\_\_\_\_\_ For Discussion Only

\_\_\_\_\_ X For Discussion and Action by the Council

**Background:** The Mental Health and Substance Abuse (MHSA) Division provides oversight and direction to state-operated and contracted programs serving individuals with mental illness and substance use disorders in Texas.

The division operates eight state mental health facilities and contracts with 37 local mental health authorities (LMHAs), one local behavioral health authority, one managed care organization, and numerous substance abuse treatment program providers. The rules under consideration apply specifically to community centers, which have been designated by statute as agencies of the state. A county, municipality, hospital district, school district, or an organizational combination of two or more of those local agencies may establish and operate a community center.

Community centers are funded through federal block grant, state general revenue, and local contributions.

**Key Health Measures:** Community centers provide mental health services in affiliation with LMHAs and DSHS or DSHS alone. The executive commissioner designates an LMHA and DSHS contracts with the LMHA. Most community centers are designated as the LMHA. The performance contract provides measures for assessing the quantity and quality of care provided under LMHAs through community centers and other community providers. Areas of measurement include adult mental health services, assertive community treatment services, supported housing services, supported employment services, and children's services. The General Appropriations Act states statewide performance expectations for numbers of clients served in these programs. The Contracts Management Unit visits sites, enters data into various systems, and completes fiscal monitoring of the contracts. The Quality Management and Consumer Oversight and Support Unit provides oversight and monitoring of the contacts. A number of corrective measures may be taken to improve performance, including liquidated damages, sanctions and remedies, corrective action plans, and special provisions to require additional or step-up reporting of contracts.

The amendments to the rules reflect the statutory change that community centers may provide health and human services and supports that are not identified in its local plan if provided by a contract with or a grant received from a local, state, or federal agency. The rule previously required the community centers to provide only services outlined in the center plan. The expansion of the services will enable community centers to access additional funding sources, provide additional services to consumers, and develop new partnerships. The effect of this change will be informally monitored in the biennial contract negotiations. Additionally all programs are monitored and quarterly reviews and quarterly risk assessments are completed by a variety of DSHS staff who may request or require additional reporting information. DSHS program staff may identify "best practices" and program and service delivery success is continuously being evaluated.

The rule changes provide clear and concise language, reflect current procedures, delete unnecessary detailed language, and do not reference language that is already provided in state statute. The expected outcome is that rules will be easier to understand and follow. Community centers are not required to submit a new plan to DSHS in the absence of significant changes in the service area, services provided, or consumers served. This is anticipated to provide a savings in staff resources at both local and state levels.

**Summary:** The purpose of the amendments and repeals is to address the community-based mental health services that are supported at federal, state, and local levels by updating the rules to reflect organizational changes and current law. The rules were developed in collaboration with the Texas Department of Aging and Disability Services (DADS), which has oversight over the mental retardation component of community centers.

The rules provide direction to existing or potential community centers on state requirements regarding establishment, maintenance, and dissolution, thus furthering the ongoing provision of community-based mental health services in Texas. The rule changes include:

- revising the rule language to be consistent with House Bill (HB) 2303, 81st Legislature, Regular Session, 2009, which states that a community center may provide health and human services and supports that are not identified in its local plan if provided by contract with a local, federal, or state agency;
- referencing statutory language, deleting language that is unnecessarily detailed or prescriptive, and updating terminology to reflect current references and terms;
- clarifying consumer and family member requirements for constituting a mental health advisory committee, a mental retardation advisory committee, and a mental health and mental retardation advisory committee;
- deleting routine plan updates and revising the criteria when resubmitting a plan modification for approval;
- proposing rules from both DADS and DSHS that would permit either agency to delegate the management team function to the other as appropriate to the programs requiring management intervention; and
- deleting rules dealing with philosophy, updating a community center's current plan, determination of salaries for community center employees, exhibits, references, and distribution.

**Summary of Input from Stakeholder Groups:** DSHS and DADS staff worked together to develop the draft rules for field input.

The draft rules were distributed to all LMHAs by DSHS, all mental retardation authorities by DADS, and to DSHS and DADS respective consumer, family, and advocacy organizations. The draft rules were posted on the DSHS website. DSHS and DADS received feedback from the Texas Council of MHMR Centers, Inc., Austin. Staff from DSHS and DADS made one change in response to comment.

As a result of stakeholder input, changes were made to the description of how the center advisory council is formed. DSHS and DADS did not make recommended changes relating to stipulation of time frames and retaining the section of the subchapter related to philosophy. The recommended changes were not made because they would add detail or reinstate language that is not necessary in the rules.

**Proposed Motion:**

Motion to recommend HHSC approval for publication of rules contained in agenda item **#4.a.ii**

<b>Approved by Assistant Commissioner/Director:</b>	Mike Maples	<b>Date:</b>	2/3/11
<b>Presenter:</b>	Ross Robinson	<b>Program:</b>	MHSA Division
		<b>Phone No.:</b>	206-5021
<b>Approved by CCEA:</b>	Carolyn Bivens	<b>Date:</b>	2/1/2011

Title 25. Health Services

Part 1. Department of State Health Services

Chapter 411. State Mental Health Authority Responsibilities

Subchapter G. Community [MHMR] Centers

Repeal §§411.304, §411.306, §411.313-411.316

Amendments §§411.301 - 411.303, 411.305, 411.307 - 411.312

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§411.301 - 411.303, 411.305, and 411.307 - 411.312, and the repeal of §411.304, §411.306, §411.313 - 411.316, concerning community mental health mental retardation centers.

BACKGROUND AND PURPOSE

The repeals and amendments are necessary to reflect organizational changes that occurred in September 2004 when the Texas Department of Mental Health and Mental Retardation merged with the Department of Aging and Disability Services (DADS) and the department. The rules also accord with House Bill 2303, 81st Legislature, Regular Session, 2009, which amended Health and Safety Code, Chapter 534, to specify that a community center may provide health and human services and supports that are not identified in its local plan as provided by a contract with or a grant received from a local, state, or federal agency.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001 (Administrative Procedure Act). Sections 411.301 - 411.303, 411.305, 411.307 - 411.312 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed. Sections 411.304, 411.306, and 411.313 - 411.316 have been reviewed and the department has determined that reasons for adopting the sections no longer exist.

SECTION BY SECTION SUMMARY

The amendments reference statutory language and do not reiterate it. They also delete language that is unnecessarily detailed or prescriptive. The amendments include updated terminology. Throughout the amendments, the entity formerly referred to as "community mental health and mental retardation center" is now referred to as "community center." Reference to the Texas Department of Mental Health and Mental Retardation, TDMHMR, or "the department," is replaced with references to the Department of Aging and Disability Services, or DADS, and the Department of State Health Services, or DSHS throughout the rules.

The repeals delete sections of the rules dealing with philosophy, updating a community center's current plan, determination of salaries for community center employees, exhibits, references, and distribution.

Section 411.301 states the statutory and rule basis for the operation of a community center.

Section 411.302 states the applicability of the subchapter for community centers.

Section 411.303 provides definitions of terms. The following terms are deleted: "commissioner," "department," and "state-operated community services (SOCS)." The following new terms are defined: "DADS" and "DSHS." The definition of "boards of trustees" in paragraph (1) is simplified. New paragraph (2) includes the term "center" as being the same as "community center." New paragraph (3) defines "current plan" as the initial or modified plan, not an updated plan, because plans are no longer required to be routinely updated. The entity formerly referred to as a "state school" is revised to a "state-supported living center" in paragraph (6). The definition of "local authority" in paragraph (10) has been updated to reference the Health and Human Services Commission.

Section 411.305 describes the process by which a community center is established. Paragraph (c)(1) describes consumer and family member requirements for constituting a mental health advisory committee, a mental retardation advisory committee, and a mental health and mental retardation advisory committee.

Section 411.307 describes the process for modifying a community center plan. Language governing the process for updating community center plans is not included because routine plan updates are no longer required.

Section 411.308 describes the process by which community centers are dissolved and merged.

Section 411.309 describes the requirements for the appointment of a manager or management team for a community center. Both DADS and DSHS are proposing rules that would permit either agency to delegate the function to the other as appropriate to the programs requiring management intervention.

Section 411.310 provides requirements for standards of administration for a community center's board of trustees.

Section 411.312 describes requirements for community center fiscal controls.

#### FISCAL NOTE

Mike Maples, Assistant Commissioner for Mental Health and Substance Abuse Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

#### SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Maples has also determined that the proposed rules will have no direct adverse economic impact on small businesses or micro-businesses. This was determined by interpretation of the

rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections.

The rules have direct application only to those entities that the department directly operates or with which the department contracts to provide community mental health services, none of which meet the definition of a small business under Government Code §2006.001. To the extent that the rules may have any indirect effect on small businesses with which the department's contractors may contract to provide services, maintaining the standards applicable to the department's contractors under these rules is essential to protecting the health and welfare of the state. Therefore, an economic impact statement and regulatory flexibility analysis for small businesses are not required.

#### ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

#### PUBLIC BENEFIT

In addition, Mr. Maples has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the rules is to ensure adequate and appropriate provision of mental health community services throughout the state.

#### REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

#### TAKINGS IMPACT ASSESSMENT

The department has determined that the proposed repeals and amendments do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under Government Code, §2007.043.

#### PUBLIC COMMENT

Comments on the proposal may be submitted to Linda Logan, Adult Mental Health Services Section, Department of State Health Services, Mail Code 2018, P. O. Box 149347, Austin, Texas 78714-9347, (512) 206-5865 or by email to [linda.logan@dshs.state.tx.us](mailto:linda.logan@dshs.state.tx.us). Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

## LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the agencies' authority to adopt.

## STATUTORY AUTHORITY

The rules are authorized by Health and Safety Code, §534.058, which requires the department to develop standards of care for the services provided by local mental health authorities and their subcontractors; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code Chapter 1001.

The rules affect Government Code, §531.0055; and Health and Safety Code, §§533.035(a), 533.047, 534.001, 534.0015, 534.002-534.006, 534.0065, 534.009, 534.018-534.019, 534.021-534.022, 534.033, 534.035, 534.038-534.040, 534.053, 534.058, 534.066, and 1001.075.

Repeal of rules.

§411.304. Philosophy.

§411.306. Updating a Community Center's Current Plan.

§411.313. Determination of Salaries of Community Center Employees.

§411.314. Exhibits.

§411.315. References.

§411.316. Distribution.

Legend: (Proposed Amendments)

Single Underline = Proposed new language

**[Bold, Print, and Brackets]** = Current language proposed for deletion

Regular Print = Current language

(No change.) = No changes are being considered for the designated subdivision

§411.301. Purpose.

(a) Health and Safety Code, Title 7, Chapter 534, Subchapter A, and this subchapter govern the establishment and operation of a community center.

(b) The purpose of this subchapter is to describe requirements by which a community center is **[mental health and mental retardation centers are]** established and operated by a local agency with a plan approved by DADS and DSHS **[the Texas Mental Health and Mental Retardation Board]** in accordance with [the Texas] Health and Safety Code, §534.001(e).

§411.302. Application.

This subchapter applies to local agencies desiring to establish a new community **[mental health and mental retardation]** center or affiliate with an existing community center and to all existing community **[mental health and mental retardation]** centers established under **[the Texas]** Health and Safety Code, Title 7, Chapter 534.

§411.303. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

(1) Board of trustees - A body of **[not less than five nor more than nine]** persons selected and appointed in accordance with **[Texas]** Health and Safety Code, Title 7, §534.002 or §534.003, and §534.004, §534.005, and §534.0065, that **[which]** has responsibility for the effective administration of a community center.

**[(2) Commissioner - The commissioner of the Texas Department of Mental Health and Mental Retardation.]**

(2) **[(3)]** Community center or center - A center established under **[the Texas]** Health and Safety Code, Title 7, Chapter 534, Subchapter A.

(3) **[(4)]** Current plan - The most recently approved initial [, **updated,**] or modified plan.

(4) DADS – The Department of Aging and Disability Services.

(5) DSHS – The Department of State Health Services.

**[(5) Department - The Texas Department of Mental Health and Mental Retardation (TDMHMR).]**

(6) Facility - A **[Any]** state hospital, state supported living center **[school]**, or state center.

(7) Initial plan - The plan developed by a board of trustees to establish a new community center.

(8) Local agency - A county, municipality, hospital district, school district, or any organizational combination of two or more of these which may establish and operate a community center.

(9) Local contribution - Funds or in-kind contribution by each local agency to a community center in the amount approved by DADS and DSHS **[the department]**, which includes local match if the center is a local authority.

(10) Local authority - In accordance with Health and Safety Code, §533.035(a), an entity designated as a local mental retardation authority or a local mental health authority by the executive commissioner of the Health and Human Services Commission. **[An entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for the planning, policy development, coordination, resource development and allocation, and for supervising and ensuring the provision of mental health services to persons with mental illness and/or mental retardation services to persons with mental retardation in one or more local service areas.]**

(11) Local match - In accordance with **[the Texas]** Health and Safety Code, §534.066, those funds or in-kind support from a local authority that are required to match some or all of the state funds the local authority receives pursuant to a contract with DADS or DSHS **[the department]**.

(12) Local service area - A geographic area composed of one or more Texas counties delimiting the population which may receive services from a local authority.

(13) Mental health services - All services concerned with research, prevention, and detection of mental disorders and disabilities and all services necessary to treat, care for, supervise, and rehabilitate persons with a severe and persistent mental illness which may be accompanied by chemical dependency or mental retardation.

(14) Mental retardation services - All services concerned with research, prevention, and detection of mental retardation and all services related to the education, training, habilitation, care, treatment, and supervision of persons with mental retardation, except the education of school-age persons that the public educational system is authorized to provide.

(15) Region - The area within the boundaries of the local agencies participating in the operation of a community center established under **[the Texas]** Health and Safety Code, Chapter 534, Subchapter A.



**[(16) State-operated community services (SOCS) - Community residential and nonresidential programs operated by the Texas Department of Mental Health and Mental Retardation.]**

§411.305. Process to Establish a New Community Center.

(a) Letter of intent. If a local agency decides to establish a new community center, then the local agency submits a letter of intent to DADS and DSHS **[the commissioner]** outlining the proposed new center's region, governing structure, and other information pertinent to the formation of the proposed new center.

(1) If the local agency submitting the letter of intent is not a county or counties, the letter must be accompanied by a letter of endorsement from the appropriate county judge or judges.

(2) DADS and DSHS **[The commissioner designates staff who are knowledgeable of community center operations to]** review the letter of intent using the following criteria:

(A) the **[rationale clearly supports the]** benefits of establishing a new center over affiliation with an existing center and the establishment of a new center is consistent with DADS's and DSHS's **[the department's]** mission for the development of community services in Texas;

(B) the population of the region of the proposed new center is at least 200,000 or large enough to support a center;

(C) a comprehensive array of mental health and mental retardation services will be provided;

(D) the extent of the local contribution supports the intent; and

(E) the efficient provision of services **[providing services efficiently]** is financially viable.

(3) DADS and DSHS determine whether the letter of intent meets the criteria described in paragraph (2) of this section. **[The commissioner's response to the local agency's letter of intent is based on the review described in paragraph (2) of this subsection and is sent to the local agency by certified mail, return receipt requested.]**

**[(A) If the commissioner approves the letter of intent, the response includes notification of such approval.]**

**[(B) If the commissioner does not approve the letter of intent, the response includes the reasons for disapproval.]**

(b) Appointment of board of trustees. If the local agency receives notice from DADS and DSHS that the letter of intent meets the criteria described in subsection (a)(2) of this section, the local agency **[approval of its letter of intent, then it]** prescribes the criteria and procedures for the appointment of members of a board of trustees as described in **[the Texas]** Health and Safety Code, §534.002 or §534.003, and §534.004, §534.005, and §534.0065. The local agency prescribes and makes available for public review the elements listed in **[the Texas]** Health and Safety Code, §534.004(a). If more than one local agency is involved, the local agencies shall enter into a contract of interlocal agreement that states **[stipulates]** the number of board members and the group from which the members are chosen, as provided in **[the Texas]** Health and Safety Code, §534.003(c). **[The local agencies may renegotiate or amend the contract of interlocal agreement as necessary to change the:]**

**[(1) method of choosing the board of trustees members; or]**

**[(2) membership of the board of trustees to more accurately reflect the ethnic and geographical diversity of the region's population.]**

(c) Initial plan.

(1) Submission. The board of trustees develops and submits to DADS and DSHS **[the commissioner]** an initial **[written]** plan to provide effective mental health and mental retardation services to the residents of the proposed region. The board of trustees shall appoint a mental health planning advisory council and a mental retardation planning advisory council to assist in developing the initial plan. A mental health planning advisory council must have **[, each with]** at least 50 percent [%] representation of persons or family members of persons who have received or are receiving mental health services **[or their family members, to assist in developing the initial plan]**. A mental retardation planning advisory council must have at least 50 percent representation of persons or family members of persons who have received or are receiving mental retardation services. A combined mental health and mental retardation planning advisory council shall have at least 50 percent representation of persons or family members of persons who have received or are receiving mental health or mental retardation services with an equal number of representatives for mental health services and mental retardation services. The board of trustees shall also seek input through a public process (e.g., public hearings, focus groups, town meetings) from the residents **[citizens]** in the proposed region regarding local needs and priorities. The initial plan must include the following elements:

(A) a comprehensive service description, which includes:

(i) a statement of the mission, vision, values, and principles which establish **[provide]** the foundation of the proposed community center's local service delivery system;

(ii) a definition of all populations to be served;

(iii) a description of relevant internal and external assessments and evaluations **[which may provide direction]** for the local strategic planning process;

(iv) a statement of local service needs and priorities **[to be addressed through a combination of resource development, expansion, reduction, and termination with the local service delivery system with the rationales for these selections];**

**[(v) a summary of needs assessment data and processes used in the determination of local service needs and priorities;]**

(v) **[(vi)]** identified gaps in services and supports in the local service delivery system **[which may assist in the determination of local service needs and priorities];**

(vi) **[(vii)]** a description of existing local mental health and mental retardation resources and planned resource development activities;]

**[(viii) a statement regarding innovative services considered and how these affect the local strategic planning process;]**

(vii) **[(ix)]** a statement of management needs and priorities to support an effective and efficient local service delivery system; and

(viii) **[(x) plan]** objectives, strategies, and outcomes;[.]

(B) a community center plan in a format required by DADS and DSHS available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [a charter in the format shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits)] ; and [.]

(C) a prospectus, which describes:

(i) any proposed transfer of funds, assets, liabilities, personnel, and consumer and administrative records and information **[records/information]** from a facility or existing community center **[state-operated community services (SOCS) or other community centers]** and the time frames for transfer;

(ii) other **[any identified additional]** available funds;

(iii) the arrangements for uninterrupted delivery of services; and

(iv) the impact, and resolution if warranted, of current contractual obligations.

(2) Review and approval.

**(A) DADS and DSHS [The commissioner designates staff who are knowledgeable of community center operations to] review the initial plan.**

**(B) If DADS and DSHS approve the initial plan, DADS and DSHS issue a certificate of recognition as a community center. [The designated staff may verify the information contained in the initial plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.**

**[(3) Notification of intended recommendation. The department notifies the board of trustees of the commissioner's intention to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:]**

**[(A) the board of trustees may request an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the initial plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;]**

**[(B) the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and]**

**[(C) the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the initial plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.]**

**[(4) Approval or disapproval. The commissioner recommends approval or disapproval of the initial plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the initial plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the initial plan by staff. A recommendation of approval requires that the assessment confirms that the initial plan properly fulfills the requirements of paragraph (1) of this subsection to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services in accordance with the Texas Health and Safety Code, §534.016.]**

**[(A) If the Texas MHMR Board approves the initial plan in its entirety, then the department issues a certificate of recognition as a community center.]**

**[(B) If the Texas MHMR Board approves portions of the initial plan and such approved portions properly fulfill the requirements of paragraph (1) of this subsection, then it instructs the official record to reflect such portions as the approved initial plan in its entirety and the department issues a certificate of recognition as a community center.]**

**[(C) If the Texas MHMR Board does not approve the initial plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, including time frames.]**

**[(5) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.]**

§411.307. Modifying a Community Center's Current Plan.

(a) Submission. **[Within the assigned three-year cycle for updating its current plan as described in §411.306 of this title (relating to Updating a Community Center's Current Plan), the]** The board of trustees of a community center shall submit a modification of its current plan in accordance with this section as frequently as necessary to reflect [material] changes in the community center's local agencies, functions, or region as described in paragraphs (1) - (3) of this subsection prior to implementing the changes. The modified plan shall be in the format required by DADS and DSHS available at [www.dads.state.tx.us](http://www.dads.state.tx.us) [shown in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits)].

(1) If a local agency wants to affiliate with an existing community center and the existing center agrees, then the board of trustees of the existing center submits to DADS and DSHS **[will submit to the commissioner]** for approval a modification of the center's current plan to reflect such affiliation, including:

(A) any proposed expansion of the center's region;

(B) a copy of the new contract of interlocal agreement; and

(C) official documentation (e.g., a resolution) confirming an **[such]** intent to affiliate from each **[present]** local agency and the proposed **[affiliated]** local agency.

(2) If a local agency wants to terminate its **[organizational combination with another local agency and end its]** affiliation with an existing community center, then the appointing authorities of the local agencies must terminate the original contract of interlocal agreement and enter into a new contract of interlocal agreement if more than one local agency remains. The board of trustees of the existing center submits to DADS and DSHS for approval a modification of the center's current plan to reflect the termination of such affiliation **[to the commissioner for approval]**, including:

(A) any change of the center's region;

(B) a copy of the new contract of interlocal agreement, if applicable; and

(C) official documentation (e.g., a resolution) from the local agency confirming its intent to terminate affiliation with the center.

(3) If an existing community center wants to expand, [or] reduce, or substantially amend its functions or region as described in its plan **[, or otherwise substantially amend its functions,]** (e.g., changing the population served **[, the services provided, or its name;]** or creating or operating a non-profit corporation), **[then]** the board of trustees of the center submits to DADS and DSHS for approval a modification of the center's current plan to reflect such changes **[to the commissioner for approval]**.

(b) Review and approval.

(1) DADS and DSHS **[The commissioner designates staff who are knowledgeable of community center operations to]** review the modified plan.

(2) If DADS and DSHS approve the modified plan, DADS and DSHS notify the board of trustees in writing of the approval and issue a new certificate if appropriate. **[The designated staff may verify the information contained in the modified plan. If additional information or changes are required for staff to recommend approval, then staff will notify in writing the board of trustees and specify requirements for resubmission, including time frames.]**

**[(c) Approval or disapproval. Staff recommends approval or disapproval of the modified plan to the commissioner. Staff may recommend approval of portions of the modified plan and disapproval of other portions. Staff may also recommend that the modified plan be submitted as an updated plan for approval by the Texas MHMR Board.]**

**[(1) If the commissioner approves the modified plan, then the department notifies the board of trustees in writing of the approval in a timely manner.]**

**[(2) If the commissioner approves portions of the modified plan then the commissioner instructs the official record to reflect such portions as the approved modified plan. The department shall notify the board of trustees in writing of the portions included in the approved modified plan in a timely manner.]**

**[(3) If the commissioner does not approve the modified plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames. The requirement for resubmission may be submission as an updated plan for approval by the Texas MHMR Board.]**

**[(d) Community center operations. A community center may perform and operate only for the purposes and functions defined in its current plan.]**

§411.308. Dissolution and [or] Merger of Community Centers.

(a) Dissolution. If a community center proposes [decides] to cease operations and dissolve, the center's board of trustees and each local agency shall inform DADS and DSHS [the commissioner] in writing of such a decision before dissolution. DADS, DSHS [The department], the board of trustees, and each local agency shall agree to a plan of dissolution that addresses at least the following factors:

- (1) the center's assets and liabilities (including personnel);
- (2) necessary audits to be conducted;
- (3) closure activities, including arrangements for uninterrupted delivery of services;
- (4) the transfer, archival, and security of records and information; and
- (5) **[the]** future plans for the region's service delivery system (e.g., affiliation with an existing center or [,] establishment of a new center **[, reliance upon a state-operated community services (SOCS)]**).

(b) Merger. If two or more existing community centers agree to merge into a new community center, then before merging the boards of trustees of the involved centers submit to DADS and DSHS [the commissioner] an initial plan in accordance with §411.305(c) of this title (relating to Process to Establish a New Community Center). The initial plan must represent the services to be provided in the combined expanded region and include a copy of the new contract of interlocal agreement and official documentation (e.g., a resolution) confirming an intent to merge from each local agency involved.

§411.309. Appointment of Manager or Management Team.

(a) The DADS commissioner and the DSHS commissioner [The commissioner] may appoint a manager or management team to manage and operate a community center in accordance with **[the Texas]** Health and Safety Code, §§534.038, 534.039, and 534.040. The DSHS commissioner may delegate responsibility for appointing a manager or management team to the DADS commissioner.

(b) A community center may request a hearing to appeal the commissioners' **[commissioner's]** decision to appoint a manager or management team in accordance with 1 Texas Administrative Code (TAC) Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) [this subsection]. Requesting a hearing [The filing of a notice of appeal] stays the appointment unless the commissioners [commissioner] based the appointment on a finding under Health and Safety Code, §§534.038(a)(2) or (4), which means [of the Texas Health and Safety Code, **(i.e.,)** the commissioners found [commissioner finds] that the community center or an officer or employee of the center misused state or federal money or endangers or may endanger the life, health, or safety of a person served by the center **[)]**.

**[(1) The community center may appeal the appointment of a manager or management team by filing a notice of appeal requesting an administrative hearing "proposal for decision" in accordance with §§411.153 - 411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of a contested case under the Administrative Procedures Act and is limited to issues related to the finding(s) under §534.038(a) of the Texas Health and Safety Code for which the manager or management team was appointed. After all evidence has been heard, the administrative law judge will close the hearing. Within 30 days from the date the hearing closed, the administrative law judge will submit a written proposal for decision to the commissioner.]**

**[(2) The commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence.]**

**[(3) The department will notify the community center of the commissioner's decision to uphold or reverse the original decision to appoint a manager or management team. If the decision is to uphold the original decision, then no other appeal process is available.]**

§411.310. Standards of Administration for Boards of Trustees.

**(a) [Each board of trustees is accountable to the department, pursuant to the Texas Health and Safety Code, §534.033, for its programs that:]**

**[(1) use department funds or local match;]**

**[(2) provide core or required services;]**

**[(3) provide services to former consumers of a department facility; or]**

**[(4) are affected by litigation in which the department is a defendant.]**

**[(b)] Each board of trustees shall [is responsible for:]**

**[(1) assuring the submission of periodic financial information and performance reports to the department if required by the department;]**

**[(2) instituting effective management procedures which assure the maximum utilization of all funds and facilitates the achievement of the goal of delivering services of high quality in a cost effective manner;]**

**[(3) complying with the Texas Health and Safety Code, §534.022, when financing property and improvements;]**



(1) ~~[(4)]~~ retain **[retaining]** all financial records, supporting documents, statistical records, and any other documents pertinent to its community center budgets, contracts, performance/workload measure, and persons served for a period of five years. If audit discrepancies have not been resolved at the end of five years, the records must be retained until resolution;

**[(5) complying with the Open Meetings Act, Texas Government Code, Chapter 551;]**

(2) ~~[(6)]~~ deposit community center funds **[requiring depositories of community center funds to secure deposits]** through the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation, or **[to]** secure deposits using collateral in a manner that protects the deposited funds; and

**[(7) submitting a copy of the approved minutes of board of trustees meetings to the department and to each local agency in accordance with the Texas Health and Safety Code, §534.009(d);]**

**[(8) ensuring community center staff abide by applicable laws, department rules, and standards; and]**

(3) ~~[(9)]~~ ensure DADS and DSHS have **[assuring the department has]** unrestricted access to all facilities, records, data, and other information under control of the community center or its contractors as necessary to enable DADS and DSHS **[the department]** to audit, monitor, and review all financial and programmatic activities and services associated with the center as provided by Health and Safety Code, §534.033(a). **[center's:]**

**[(A) use of department funds or local match;]**

**[(B) provision of core or required services;]**

**[(C) provision of services to former consumers of a department facility;]**

**[(D) programs that are affected by litigation in which the department is a defendant; or]**

**[(E) fiscal controls.]**

~~(b)~~ **[(c)]** Each board of trustees shall receive **[is accountable to the department and to each local agency for receiving appropriate]** training as required by **[the Texas]** Health and Safety Code, §534.006, and this subsection.

(1) Before assuming office, new members must receive initial training, including **[, but not limited to]:**

(A) the importance of local planning and the roles and functions of the board of trustees, planning advisory committees, community center staff, and other service organizations;

**[(B) the enabling legislation that created the community center;**

**[(B) [(C)]** the current philosophies and program principles on which service delivery systems are founded, information about the service and support needs of people with mental illnesses, mental retardation, and related conditions, and the range of environments in which those services may be delivered;

**[(C) [(D)]** an overview of mental illnesses, mental retardation, and related conditions;

**[(D) [(E)]** an overview of the current local and state service delivery system, including descriptions of the types of mental health and mental retardation services provided by the community center; and

**[(F) the community center's budget for the current program year;**

**[(G) the results of the most recent formal audit of the community center;**

**[(H) the requirements of the Open Meetings Act, Texas Government Code, Chapter 551, and the Open Records Act, Texas Government Code, Chapter 552;]**

**[(I) the requirements of laws concerning conflict of interest and other laws relating to public officials;]**

**[(J) any ethics policies adopted by the community center; and]**

**[(E) [(K)]** applicable state and federal laws, rules, standards, and regulations.

(2) Utilizing input from persons who have received or are receiving services, their family members, and advocates, the training programs must provide orientation in the perspectives and issues of persons receiving services.

(3) A community center shall develop an annual training program for its board of trustees.

(A) Training methodologies may include:

(i) presentations by staff at regular board sessions;

(ii) on-site program visits;

- (iii) statewide and regional training conferences;
- (iv) seminars to enhance team building skills;
- (v) regional and cross-training with other community centers and their boards of trustees; and
- (vi) formal and informal meetings with tenured trustee members.

(B) In addition to the topics required in Health and Safety Code, §534.006, and paragraphs (1) and (2) of this subsection, training topics may include:

- (i) risk management;
- (ii) budget analysis;
- (iii) consumer rights;
- (iv) strategic planning; and
- (v) new legislative and contractual requirements of community centers.

**[(3) Annual training must be provided for current board of trustees members, which is administered by the professional staff of the community center, including the center's legal counsel.**

**[(4) Guidelines for training are developed and updated as necessary by an advisory committee for the department, which includes representatives of advocacy organizations broadly representative of the interests of persons with mental illness or mental retardation and their families, and representatives of boards of trustees. The current guidelines are referenced as Exhibit B in §411.314 of this title (relating to Exhibits).]**

**[(d) Each board of trustees may accept special funds for long-range projects and plans. These funds must be kept separate from the community center's operating budget and may not be used as local match. An annual accounting of these reserve funds (center trust, endowment, or foundation resources) must be made to the department.]**

**[(e) Each board of trustees must obtain department approval for any building alterations, renovation, or repair maintenance expenses exceeding \$50,000 for each project per fiscal year per community center if department funds or local match are to be used. In accordance with the review process and to avoid undue delays, a board of trustees must seek advance written approval from the department at least 30 days prior to the release of the project for competitive bids.]**

(c) [(f)] The approval and notification requirements in this subsection are in accordance with Health and Safety Code, §534.021.

(1) A **[Each]** board of trustees must ensure that its community center receives written approval from DADS and DSHS **[the department]** prior to purchase, lease-purchase, or any other transaction which will result in the community center's ownership of real property, including buildings, if DADS's and DSHS's **[any department]** funds or local match are involved. In addition, for acquisition of nonresidential property, the community center must notify each local agency at least 30 days **[not later than the 31st day]** before it enters into a binding obligation to acquire the property.

(2) A community center must provide written notification to DADS and DSHS **[the department]** and each local agency at least 30 days **[not later than the 31st day]** before it enters into a binding obligation to acquire real property, including a building, if the acquisition does not involve the use of DADS's and DSHS's **[department]** funds or local match. Upon request, the commissioners **[commissioner]** may waive the 30-day requirement to notify DADS and DSHS **[the department]** on a case-by-case basis. **[Notification of the department is not required for donations of real or personal property under the Texas Health and Safety Code, Title 7, §534.018 or §534.019, that do not require the expenditure of any funds by the community center and that have been approved by the board of trustees.]**

(3) **[(1)]** All notices and requests for approval are submitted on the Real Property Acquisition and Construction Review Form **[TXMHMR Property Review Form]** and accompanied by supporting information including, but not necessarily limited to:

(A) the reason for purchasing the property or a brief explanation of the purpose it will serve;

(B) a summary of the plan for paying for the property, including a statement regarding whether DADS's or DSHS's **[department]** funds or local match will be used, and if DADS's or DSHS's funds will be used, how the funds will be used, such as **[either]** directly or in the retirement of any debt associated with the acquisition;

(C) if unimproved, an assessment of the suitability of the property for construction purposes or, if improved, an assessment of the current condition of the buildings;

(D) an independent appraisal of the real estate the community center intends to purchase conducted by an appraiser certified by the Texas Appraiser Licensing and Certification Board; however, the board of trustees may waive this requirement if the purchase price is less than the value listed for the property by the local appraisal district and the property has been appraised by the local appraisal district within the past two years; and

(E) a statement that the board of trustees and executive staff are not participating financially in the transaction and will derive no personal benefit from the transaction**;** **and]**

**[(F) a statement detailing the need to waive the 30-day requirement if a waiver is being requested.]**

**[(2) A community center may not purchase or lease-purchase property for an amount that is greater than the property's appraised value unless;]**

**[(A) the purchase or lease-purchase of that property at that price is necessary;]**

**[(B) the board of trustees documents in the official minutes the reasons why the purchase or lease-purchase is necessary at that price; and]**

**[(C) a majority of the board approves the transaction].**

#### §411.311. Civil Rights.

Each community center shall provide services in compliance with the Civil Rights Act of 1964, as amended, and the Americans With Disabilities Act (ADA) of 1990, and **[shall]** require the same of entities with which it contracts.

#### §411.312. Fiscal Controls.

Pursuant to **[the Texas]** Health and Safety Code, §534.035, each community center must comply with the following review and audit procedures to provide reasonable assurance that the community center has adequate and appropriate fiscal controls.

##### (1) Audit procedures.

(A) Each board of trustees must ensure an annual financial and compliance audit of its accounts is conducted by a certified public accountant or public accountant licensed by the Texas State Board of Public Accountancy. At a minimum, the audit must be conducted in accordance with Government Auditing Standards. **[The board of trustees must submit eight copies of the audit to the department no later than the first day of February. If the board of trustees declines to approve the audit, it will attach to each copy of the audit a statement detailing its reason for disapproving the audit.]**

(B) DADS and DSHS **[The department]** may conduct on-site audits of a community center as determined by DADS's and DSHS's **[the department's]** financial risk analysis of the center.

##### (2) Review procedures.

(A) DADS and DSHS **[The department]** will conduct a desk review of each community center's annual audit to determine audit quality and to identify findings and questioned costs.

(B) DADS and DSHS [**The department**] will perform a financial risk analysis of each community center based on the center's annual audit and/or any financial information that the center is required to submit in accordance with §411.310(b)(1) of this title (relating to Standards of Administration for Boards of Trustees).

Proposed Repealed Language  
Strikethrough=repealed text

~~§411.304.—Philosophy.~~

~~—(a) To realize the purpose and policy for community centers in Texas as described in the Texas Health and Safety Code, §534.0015, the provisions of this subchapter are intended to promote an effective relationship between state and local government in the form of local boards of trustees of community centers; these provisions recognize the importance of local initiatives and control in the development and expansion of community services.~~

~~—(b) The advantage for a local agency in forming a new community center or affiliating with an existing community center is the greater degree of local ownership and control of the services provided. The department recognizes the importance of local control vested in a community center. Therefore, the department encourages and supports the affiliation of local agencies with community centers. The following principles are important in the development of local services.~~

~~——(1) Persons receiving services, as well as their families and friends, should have a prominent role in determining which services best meet their needs.~~

~~——(2) Persons with mental illness or mental retardation should have the opportunity for integration into the activities and social fabric of the local community.~~

~~——(3) Decisions by the board of trustees of a community center should be made openly with consideration of the view of those affected by its decisions.~~

~~——(4) Local communities, persons receiving services and their families, community centers, and other service providers should work together to identify service delivery needs and plan a system that meets these needs.~~

~~——(5) Mental health and mental retardation services are of the best value for the public funds expended.~~

~~§411.306.—Updating a Community Center’s Current Plan.~~

~~—(a) Submission. On an assigned three-year cycle, or as requested by the Texas MHMR Board, or as necessary, the board of trustees of a community center shall submit to the commissioner an update of its current plan, which reflects the center’s purposes and functions. The updated plan shall be in the format shown in “Charter To Be a Community MHMR Center,” referenced as Exhibit A of §411.314 of this title (relating to Exhibits).~~

~~—(b) Review. The commissioner designates staff who are knowledgeable of community center operations to review the updated plan. The designated staff may verify the information contained in the updated plan. If additional information or changes are required for the commissioner to recommend approval, then the commissioner will notify in writing the board of trustees and specify requirements for resubmission, including time frames.~~

~~—(c) Notification of intended recommendation. The department notifies the board of trustees of the commissioner’s intention to recommend approval or disapproval of the updated plan to the Texas MHMR Board. If the commissioner intends to recommend disapproval or partial disapproval, then:~~

~~——(1) the board of trustees may request an administrative hearing “proposal for decision” in accordance with §§411.153–411.158 of Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases). The hearing is not a hearing of~~

a contested case under the Administrative Procedures Act and is limited to issues related to the updated plan. After all evidence has been heard, the administrative law judge closes the hearing. Within 30 days from the date the hearing closed, the administrative law judge submits a written proposal for decision to the commissioner;

——— (2) ~~the commissioner will accept the administrative law judge's recommendation in the proposal for decision unless the commissioner finds that the recommendation is not supported by substantial evidence; and~~

——— (3) ~~the department notifies the board of trustees of the commissioner's decision to recommend approval or disapproval of the updated plan to the Texas MHMR Board. If disapproval will be recommended, then no other appeal process is available.~~

——— (d) Approval or disapproval. ~~The commissioner recommends approval or disapproval of the updated plan to the Texas MHMR Board. The commissioner may recommend approval of portions of the updated plan and disapproval of other portions. The commissioner's recommendation shall include a written assessment of the updated plan by staff. A recommendation of approval requires that the assessment confirm that the updated plan properly fulfills the requirements contained in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits), to provide a comprehensive array of mental health and mental retardation services, including screening and continuing care services in accordance with the Texas Health and Safety Code, §534.016.~~

——— (1) ~~If the Texas MHMR Board approves the updated plan in its entirety, then the department issues an updated a certificate of recognition as a community center.~~

——— (2) ~~If the Texas MHMR Board approves portions of the updated plan and such approved portions properly fulfill the requirements contained in "Charter To Be a Community MHMR Center," referenced as Exhibit A of §411.314 of this title (relating to Exhibits), then it instructs the official record to reflect such portions as the approved updated plan in its entirety and the department issues an updated certificate of recognition as a community center.~~

——— (3) ~~If the Texas MHMR Board does not approve the updated plan, then the department provides written notification to the board of trustees in a timely manner of the reasons for disapproval and the requirements for resubmission, if any, including time frames and the functions the community center may perform pending approval. If the Texas MHMR Board does not provide requirements for resubmission then the department no longer recognizes the entity as a community center.~~

——— (e) Community center operations. ~~A community center may perform and operate only for the purposes and functions defined in its current plan or as provided for in subsection (d)(3) of this section.~~

#### §411.313.—Determination of Salaries of Community Center Employees.

——— Pursuant to the Texas Health and Safety Code, Title 7, §534.011, the board of trustees of a community center that does not have a contract with the department must determine the salaries of its employees utilizing only one of the methods described in paragraphs (1)–(3) of this section. The method for determining salaries of community center employees described in a contract between a community center and the department supersedes the requirements in this section.

——— (1) Market analysis. ~~If the board of trustees chooses to determine salaries and benefits with a market analysis, documentation must be maintained on which studies are being used and the positions to which they pertain. Documentation must be updated every two years. Records~~



~~maintenance must include:~~

~~\_\_\_\_\_ (A) the current position documentation which describes the actual work being performed in the positions; and~~

~~\_\_\_\_\_ (B) evidence of an approximate job match between the community center position and the documentation obtained in the job market.~~

~~\_\_\_\_\_ (2) Internal study. If the board of trustees chooses to determine salaries and benefits with an internal salary study, the pay structure must be designed to recognize the internal relationships among jobs of the center. The internal salary study must also take into consideration market demands that permit the community center to compete with other employers for available and desirable human resources. The internal salary study process must include the:~~

~~\_\_\_\_\_ (A) current position documentation which describes the actual work being performed in the positions;~~

~~\_\_\_\_\_ (B) a method of establishing the internal relationships of jobs which may be either whole job ranking or point-factor job evaluation methodologies;~~

~~\_\_\_\_\_ (C) identification of competitive markets that are appropriate for various types of positions, such as:~~

~~\_\_\_\_\_ (i) state salaries;~~

~~\_\_\_\_\_ (ii) local government salaries;~~

~~\_\_\_\_\_ (iii) private sector salaries; and~~

~~\_\_\_\_\_ (iv) geographic considerations (i.e., local area, regional or national issues);~~

~~\_\_\_\_\_ (D) compensation comparisons which include both cash compensation and benefits to identify the community center's competitive posture in all reward areas; and~~

~~\_\_\_\_\_ (E) proposed compensation adjustments which consider current market competitive posture versus desired position and general wage increase trends.~~

~~\_\_\_\_\_ (3) State Classification Plan. If the board of trustees chooses to use the State Classification Plan to determine salaries, the community center must:~~

~~\_\_\_\_\_ (A) compare current classification specifications with state classification plan job specifications;~~

~~\_\_\_\_\_ (B) compare current salaries used with the salary schedule in Article IX, of the current appropriations act. All Steps 01 through 08 may be used within pay groups. Amounts less than Step 01 may be authorized by the board of trustees as well; and~~

~~\_\_\_\_\_ (C) select an appropriate classification to determine the compensation for each position. If a similar position cannot be found in the State Classification Plan, the board of trustees may utilize the previously described market analysis or internal salary study to determine the compensation for the position. In lieu of these two methods, a board of trustees may petition the commissioner to exclude such a position, at a specific rate, from the State Classification Plan by submitting:~~

~~\_\_\_\_\_ (i) a written proposal for an exemption for the position needed, stating the salary;~~

~~\_\_\_\_\_ (ii) current position documentation which describes the actual work being performed in the position; and~~

~~\_\_\_\_\_ (iii) a statement of the level of compensation sought.~~

~~§411.314. Exhibits.~~

~~—The following exhibits referenced in this subchapter are available by contacting TDMHMR, Policy Development, P.O. Box 12668, Austin, TX 78711 2668:~~

- ~~——(1) Exhibit A —“Charter To Be a Community MHMR Center.”~~
- ~~——(2) Exhibit B —Guidelines for Board of Trustees Training.~~

~~§411.315. —References.~~

~~—Reference is made in this subchapter to the following federal and state laws and rules:~~

- ~~——(1) Texas Health and Safety Code, Chapter 534, Subchapter A, §534.001, §534.0015, §§534.002-534.006, §534.0065, §534.009; §534.011, §534.018, §534.019, §534.022, §534.033, §534.035, §§534.038-534.040, and §534.066;~~
- ~~——(2) Texas Government Code, Chapters 551 and 552;~~
- ~~——(3) Civil Rights Act of 1964;~~
- ~~——(4) Americans With Disabilities Act(ADA) of 1990; and~~
- ~~——(5) Chapter 411, Subchapter D of this title (relating to Administrative Hearings of the Department in Contested Cases).~~

~~§411.316. —Distribution.~~

~~—This subchapter will be distributed to:~~

- ~~——(1) members of the Texas MHMR Board;~~
- ~~——(2) executive, management, and program staff of Central Office;~~
- ~~——(3) chairpersons, boards of trustees, and executive directors of community centers;~~
- ~~——(4) executive directors of state-operated community services (SOCS); and~~
- ~~——(5) advocacy organizations.~~